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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 16-00440 WHA
)	
Plaintiff,)	SUPPLEMENTAL BRIEF REGARDING MOTION
)	FOR DEPOSITIONS PURSUANT TO FED. R.
v.)	CRIM. P. 15,
)	
YEVGENIY ALEXANDROVICH NIKULIN,)	Trial Date: July 6, 2020
)	Time: 9:00 a.m.
Defendant.)	Courtroom:
)	
)	

Pursuant to the Court's directions at the June 2, 2020, hearing, the United States hereby files this supplemental brief regarding the status of its pending Motion for Depositions Pursuant to Fed. R. Crim. P. 15. ECF No. 220.

In its motion, the United States sought an order authorizing remote depositions or remote testimony for two government witnesses, former LinkedIn employee Ganesh Krishnan and FBI Special Agent Emily Odom.

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A. Witness Ganesh Krishnan

As stated at the June 2, 2020, hearing, and as detailed further in the Supplemental Declaration of Ganesh Krishnan (ECF No. 233), Mr. Krishnan is prepared to testify voluntarily in person at trial despite his significant concerns. He requested that the Court take precautions to ensure the safety of all trial participants, which the Court and parties have discussed. The Court has a current, detailed plan for social distancing within the courtroom and other measures designed to ensure the safety of participants. Mr. Krishnan also requested that his testimony be completed in one day to avoid increasing his risk of contagion by traveling to and from the courthouse multiple times. Counsel for the United States intends to call Mr. Krishnan at a time that should allow for completion of his testimony in one day. These representations were made with the understanding that trial would resume June 8, 2020. Counsel for the United States have since communicated with counsel for Mr. Krishnan, who expressed that his agreement to testify in person voluntarily would extend to the planned July 6, 2020, resumption, as long as there is no significant spike in COVID-19 cases in the Bay Area between now and then.

Given these facts, the United States withdraws its motion for Mr. Krishnan's remote deposition or remote testimony, subject to renewal should circumstances change.

B. Witness Emily Odom

FBI Special Agent Emily Odom remains sheltering in place in Washington, D.C., pursuant to the recommendation of her doctor and the applicable public health guidelines, as described in her Declaration in support of the United States' pending Motion. ECF No. 220-1. Given the specific, verified medical risk that traveling cross-country at this time would pose to Special Agent Odom, the United States has secured the testimony of another witness who will testify to the same subject matter. FBI Special Agent Anton Mlaker will identify co-conspirator Nikita Kislitsin as one of the individuals at the March 2012 Moscow hotel meeting with defendant Yevgeniy Nikulin. Counsel for the United States

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1 are gathering any additional discovery that may exist related to Special Agent Mlaker's testimony and
2 will produce any identified discovery to defendant.

3 Given these facts, the United States withdraws its motion for Special Agent Odom's remote
4 deposition or remote testimony, subject to renewal should circumstances change.

5 DATED: June 9, 2020

Respectfully submitted,

6 DAVID L. ANDERSON
United States Attorney

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8 /s/
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9 KATHERINE L. WAWRZYNIAK
Assistant United States Attorneys
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